

Decision 03-05-062 May 22, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation (OII) into the Adequacy of the Southern California Gas Company's (SoCalGas) and San Diego Gas & Electric Company's (SDG&E) Gas Transmission Systems to Serve the Present and Future Gas Requirements of SDG&E's Core and Noncore Customers.

Investigation 00-11-002  
(Filed November 2, 2000)

**OPINION ON REQUEST FOR INTERVENOR COMPENSATION**

We award \$47,759.64 as intervenor compensation to The Utility Reform Network (TURN) for its substantial contributions to Decision (D.) 02-11-073.

**1. Background**

Investigation (I.) 00-11-002 was prompted by high gas demand during the summer of 2000 that threatened gas curtailments for SDG&E's noncore customers. In addition, in June 2000, SDG&E began to provide gas service to a new electric generator (EG) in Rosarito, Mexico,<sup>1</sup> contributing to increased capacity demands.

---

<sup>1</sup> Commission Federal de Electricidad's Presidente Juarez Power Plant in Baja California Norte, Mexico (Rosarito) receives its natural gas supply exclusively through Gasoducto Rosarito (GR), an SDG&E affiliate. When SoCalGas and SDG&E submitted Application (A.) 98-07-005 to provide service to GR, their application did not disclose any uncertainty regarding the adequacy of the system to meet the requirements of existing customers in addition to new, incremental requirements of GR.

To address this expanded demand situation, Sempra Energy (Sempra), the parent of SoCalGas, SDG&E, and GR, filed Advice Letter (AL) 1210-G on August 1, 2000. The AL requested emergency review and approval of SDG&E's proposal to temporarily revise the gas transportation service level elections of its large EG customers<sup>2</sup> from firm noncore service to interruptible noncore service. Numerous parties filed protests to AL 1210-G. The AL and ensuing protests raised a variety of questions and issues prompting the initiation of I.00-11-002. The OII specified certain issues to be addressed relating to SoCalGas and SDG&E's ability to continue providing service to SDG&E's core and noncore customers. The Commission included SoCalGas in the investigation because SoCalGas provides transmission service to the SDG&E territory. The Commission subsequently broadened the scope of the investigation to include the adequacy of the SoCalGas transmission system to serve the needs of its own customers and bifurcated the proceeding into Phase I, addressing the adequacy of SDG&E's system, and Phase II, addressing the adequacy of SoCalGas' system.

On November 21, 2002 we issued D.02-11-073. In the Phase I portion of that decision, we authorized SDG&E to limit firm noncore service to available firm capacity until additional capacity improvements are completed, and we adopted a 1-in-10 cold-year reliability standard for firm noncore service. In the Phase II portion of that decision, we adopted a 1-in-35 year system planning criterion for core customers, a 1-in-10 year standard for noncore customers, and kept the 1-in-35 year standard for core customers for local transmission.

---

<sup>2</sup> "Large EG customers" are defined as those with an average daily gas usage of greater than 15 million cubic feet.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. §1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the intervenor's planned participation and an itemized estimate of the compensation the intervenor expects to request. It may also request a finding of eligibility. To be eligible, an intervenor must establish that it is a "customer" as defined in §1802(b),<sup>3</sup> and that participation without an award of fees or costs would impose a significant financial hardship (§1803(b)).

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." §1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable

---

<sup>3</sup> The intervenor compensation statute uses "customer" and "intervenor" interchangeably, as we do in today's decision.

advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

§ 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with §1806.

The OII allowed participants to become parties of record by letter request. TURN submitted a timely NOI to seek intervenor compensation, including a demonstration that it met the definition of "customer," the requirement of financial hardship, and the other criteria for an award of intervenor compensation. On January 23, 2001, assigned Administrative Law Judge (ALJ) Carol Brown ruled that TURN had met the requirements for seeking intervenor compensation. §1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. D.02-11-073 was adopted by the Commission on November 21, 2002 and mailed on November 25, 2002. The 60<sup>th</sup> day after mailing was Friday January 24, 2003. TURN filed its request on that day. Accordingly, the request is timely.

### **3. Substantial Contribution to Resolution of Issues**

A party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total. Where a party has participated in settlement negotiations and endorses a settlement of some or all issues, the Commission uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation.

In addition, in D.98-04-059, we adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in §1801.3, where the Legislative gave the Commission guidance on program administration. (*See* D.98-04-059, *mimeo.*, at 31-33, and Finding of Fact 42.) In that decision, we discuss the fact that participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

TURN argues that its participation met the productivity standard even though it is impossible to monetize the benefits of adopting revised capacity planning standards or probing the relationships of the various Sempra affiliates. We agree. Because of TURN's involvement, we received the benefit of expert testimony and legal analysis that substantially assisted our decision-making process and that the Commission did not have to fund itself. Our ultimate

decision benefited in two ways from this participation, first, in the structure of the capacity planning rules we adopted, and second, in the degree of confidence we have that our understanding of the economic and legal relationships among the Sempra affiliates is complete and accurate.

Throughout Phase I, TURN focused our attention on the potential for conflicts of interest between Sempra's various affiliates involved in the delivery of gas and electricity to California businesses and consumers. Sempra is the parent of both unregulated and regulated companies. As a general proposition, it makes higher returns on its investments in unregulated companies, and therefore has an economic incentive to move business and investment from regulated to unregulated companies. As a further consequence, Sempra has an economic incentive to move business and investment from a regulated to an unregulated affiliate. While we were unable to conclude with certainty that Sempra engaged in such activities, which would be a violation of our affiliate transaction rules, we did find that "SDG&E was less than forthright when it applied for its tariff for GR. Specifically, SDG&E represented that the addition of service to GR would not adversely impact the gas customers in San Diego's service territory. Obviously, that was not true."<sup>4</sup> Our concern about potential abuse of the affiliate transaction rules led us to implement new rules and procedures that would lessen the likelihood of future interruptions of gas and electric supply. TURN took the lead in developing the record on which we based that portion of our decision.

---

<sup>4</sup> D.02-11-073 at 26.

In Phase II, TURN argued against the adoption of any slack capacity design criterion for system planning, and especially opposed the 15-20% slack capacity sought by SoCalGas. Instead, TURN recommended that the Commission order SoCalGas to hold open seasons for noncore customers for capacity expansions and require long-term contracts to recover costs.

We did not adopt the slack capacity advocated by SoCalGas and supported by numerous other parties. Instead, we adopted a system planning criteria of 1-in-10 for noncore customers and kept the 1-in-35 for core customers for local transmission. In tandem with this planning criteria, we also directed SoCalGas to hold open seasons on its local transmission lines.

TURN's participation in Phase II, especially its participation in cross-examination and post-hearing briefs assisted us in creating a complete record, and we did end up rejecting slack capacity and ordering open seasons as a method of planning for capacity expansions—both positions advocated by TURN.

Based on these results, we find that TURN has made a substantial contribution as required for an award of intervenor compensation.

#### **4. Reasonableness of Claimed Compensation**

TURN requests compensation in the amount of \$47,759.64, as follows:

Professional Time	\$41,404.19
JBS/Professional Consulting	3,233.90
Lexis Research	480.00
Copying charges	2,278.00
Postage & overnight delivery charges	357.92
Phone	<u>5.63</u>
<b>TOTAL</b>	<b>\$47,769.54</b>

#### 4.1 Hourly Rates

TURN employed three attorneys in this proceeding, whose rates are:

Marcel Hawiger	\$190/hr.
Michel Florio	\$315/hr.
Randy Wu	\$350/hr.

The following chart summarizes the professional hours claimed by TURN's attorneys for work on I.00-11-002 during 2001:

ATTORNEY	ISSUE HOURS EXPENDED	ISSUE HOURS CLAIMED	COMP. HOURS EXPENDED	COMP. HOURS CLAIMED
Hawiger	179.95	157.46	11.50	5.75
Florio	10.50	10.50	0	0
Wu	27	20.25	0	0

TURN chose not to bill 25% of Wu's total time and 12.5% of Hawiger's total time because the Commission did not accept TURN's recommendation in Phase I. Per our practice, Hawiger's time spent preparing compensation requests was reduced by 50%. TURN documented the claimed hours by presenting a daily breakdown of professional hours with a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

The total value of billed professional time was calculated by multiplying claimed hours times hourly rates:

Hawiger:	163.21 hours x \$190/hr = \$31,009.19
Florio	10.50 hours x \$315/hr = \$ 3,307.50
Wu	20.25 hours x \$350/hr = <u>\$ 7,087.50</u>
<b>TOTAL</b>	<b>\$41,404.19</b>

#### 4.2 Other Costs

TURN requests \$6,355.45 for out-of-pocket expenses, including consulting time, equal to 13.5% of the total compensation claimed. TURN's



request for reimbursement of these charges appears reasonable given the duration and complexity of the proceeding. Included in the other costs is \$3,233.90 for JBS Energy, Inc. This sum represents 5.42 hours of the professional time of William Marcus at \$160/hr and 20.58 hours of the professional time of Gayatri Schilberg at \$115/hr. We have previously approved both of these hourly rates for 2001. Schilberg's time includes a voluntary reduction of 2 hours for time spent on Phase I issues.

## **5. Award**

We award TURN \$47,759.64. As in all intervenor compensation decisions, we put the intervenor on notice that the Commission Staff may audit records related to this award. Adequate accounting and other documentation to support all claims for intervenor compensation must be made and retained. The records should identify specific issues for which intervenors request compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

The named respondents in this proceeding were SoCalGas and SDG&E. We will assess payment responsibility among them in proportion to their respective 2002 California natural gas jurisdictional revenues.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing April 9, 2003 (the 75th day after TURN filed its compensation request) and continuing until the Utilities make full payment of the award.

## **6. Waiver of Comment Period**

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

## **7. Assignment of Proceeding**

Carl Wood is the Assigned Commissioner and Carol Brown is the assigned Administrative Law Judge.

## **Findings of Fact**

1. TURN has made a timely request for compensation for its contribution to D.02-11-073.
2. TURN contributed substantially to D.02-11-073.
3. TURN has requested hourly rates for 2001 that have already been approved by the Commission.
4. The 2001 hourly rates for TURN's professionals are reasonable.
5. The miscellaneous costs incurred by TURN are reasonable.

## **Conclusions of Law**

1. TURN has fulfilled the requirements of §§1801-1812 which govern awards of intervenor compensation.
2. TURN should be awarded \$47,759.64 for its contribution to D.02-11-073.
3. This order should be effective today so that TURN may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$47,759.64 in compensation for its substantial contribution to Decision 02-11-073.
2. Within 30 days of the effective date of this order, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) shall pay Aglet a total of \$47,749.64 in proportion to their respective 2002 natural gas jurisdictional revenues. SoCalGas and SDG&E shall also pay interest on the

award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, beginning April 9, 2003 and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. This proceeding is closed.

This order is effective today.

Dated May 22, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

**COMPENSATION DECISION SUMMARY INFORMATION**

<b>Compensation Decision(s):</b>	D0305062
<b>Contribution Decision(s):</b>	D0211073
<b>Proceeding(s):</b>	I0011002
<b>Author:</b>	ALJ Brown
<b>Payer(s):</b>	Southern California Gas Company; San Diego Gas & Electric Company

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Change/Disallowance</b>
The Utility Reform Network	1/24/03	\$47,759.64	\$47,759.64	

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Marcel	Hawiger	Attorney	The Utility Reform Network	\$190	2001	\$190
Michel	Florio	Attorney	The Utility Reform Network	\$315	2001	\$315
Randy	Wu	Attorney	The Utility Reform Network	\$350	2001	\$350
Gayatri	Schilberg	Economist	The Utility Reform Network	\$115	2001	\$115
William	Marcus	Economist	The Utility Reform Network	\$160	2001	\$160